

Also attached are copies of the Poster(s), Notice(s) and Claim Forms to be posted and distributed for the Tyler v. Anderson lawsuit. If additional copies are needed, camera ready copies of the Notice and Claim Forms in both English and Spanish are being sent with this letter. Another source for accessing these forms is through the CDSS website: www.dss.cahwnet.gov/getinfo/default.htm.

If prospective claimants need more information or need claim forms in Cambodian, Chinese, Russian or Vietnamese, please direct them to the Tyler information toll free number 1-877-508-1327.

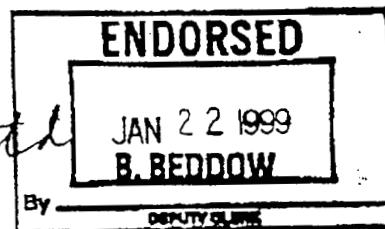
If you need further clarification on the judgment or more information regarding the contents of this notice, please contact Patricia Johnston, Chief of Adult Programs Management Bureau at (916) 229-4000 or Dreama Larish, Analyst at (916) 229-0336.

Sincerely,

Original Signed By
Donna L. Mandelstam on 1/3/01

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachments



8 SUPERIOR COURT OF CALIFORNIA

9 SACRAMENTO COUNTY

10 KATHRYN E. TYLER, GARY TYLER,) CASE NO. 376230
11 JACK D. TYLER, a minor, and)
12 MATHEW L. TYLER, a minor, both)
minors by their parents and)
guardians ad litem, KATHRYN E.) JUDGMENT
TYLER and JACK TYLER,)
individually and on behalf of)
other similarly situated,)
Plaintiffs-Petitioners,)
v.)
16 ELOISE ANDERSON, Director, State)
17 Department of Social Services,)
and STATE DEPARTMENT OF SOCIAL)
SERVICES,)
Defendants-Respondents.)

21 The parties' Joint Motion To Approve Class Action
22 Settlement And Entry Of Judgment was heard on January 22, 1999 at
23 1:30 p.m. in Department 33, Judge Lloyd G. Connelly, Judge
24 presiding. Charles Wolfinger appeared for plaintiffs, and Mateo
25 Munoz, Deputy Attorney General, appeared for defendants.

26 This court, having considered the pleadings and papers on
27 file herein and the argument of counsel,

1 HEREBY ORDERS, ADJUDGES AND DECREES:

2 I. DECLARATORY JUDGMENT

3 This court makes the following declaration of the
4 parties' rights and duties under Code of Civil Procedure section
5 1060:

6 A. Defendants' Violations Of State Laws

7 Defendants violated the rights of plaintiffs and the
8 certified class defined as ". . . all applicants for or recipients
9 of In-Home Supportive Services and their providers, who since
10 June 17, 1990, have been denied range of motion exercises under
11 the IHSS program solely because of defendants' policy prohibiting
12 them as a paramedical service under Welfare and Institutions Code
13 section 12300.1, before it was amended by Assembly Bill 1773,
14 Stats.1992, c.939" (Order. . . Granting Plaintiffs' Motion For
15 Class Certification, filed May 23, 1994) (collectively "certified
16 class") as follows. Defendants' enforcement of their official
17 policy prohibiting range of motion exercises as a paramedical
18 service under the In-Home Supportive Services Program (IHSS) from
19 about 1990 to 1993 (ROM prohibition policy) violated Welfare and
20 Institutions Code section 12300.1 (before it was amended by
21 Assembly Bill 1773, Stats.1992, c.939), because that section gave
22 defendants no discretion to prohibit range of motion exercises
23 when ordered by a licensed health care professional.

24 B. Defendants' Duty To Pay Retroactive Benefits

25 1. As a result of the violations of state laws,
26 defendants have a duty to pay plaintiffs and the class
27 retroactive benefits as follows:

1 a. all IHSS compensation for range of motion
2 exercises provided that was denied pursuant to their ROM
3 prohibition policy from June 17, 1990 through March 31, 1994;

4 b. prejudgment interest at the legal rate of 7% on
5 the amount of benefits from the date of the first payment was
6 originally owed but for defendants' ROM prohibition policy to the
7 date of this judgment; and

8 c. postjudgment interest at the legal rate of 7% on
9 the amount of benefits from the date of this judgment until paid.

10 2. Eligibility conditions for retroactive benefits:

11 A class member is eligible for retroactive benefits based
12 on the ROM prohibition policy based on all the following:

13 a. At any time from June 17, 1990 through March 31,
14 1994, a doctor prescribed range of motion exercises for an IHSS
15 recipient or applicant, and

16 b. At any time from June 17, 1990 through March 31,
17 1994, a provider performed range of motion exercises prescribed
18 for an IHSS recipient or applicant and was not paid therefor.

19
20 II. WRIT OF MANDATE TO PAY RETROACTIVE BENEFITS

21 Let a writ of mandate issue pursuant to Code of Civil
22 Procedure section 1085 on behalf of plaintiffs and the certified
23 class, commanding defendant Anderson, her successors in office,
24 defendant State Department of Social Services (DSS), its
25 officers, employees, agents, representatives, and all other
26 persons acting in their behalf or subject to their control or
27 supervision (collectively "defendants") , including their
28

1 statutory agents, the board of supervisions of each county of
2 California and the directors of each county welfare department to
3 (collectively "county") to comply with their mandatory duties as
4 follows:

5 A. Develop An Explanatory Notice And A Claim Form

6 1. Develop an explanatory notice about the right to
7 claim retroactive benefits (notice) and a provider/recipient
8 claim form (claim form), which are written in plain language in
9 English and Spanish.

10 2. Develop a poster size notice not less than 17" x 22"
11 in size (public notice), with the contents of the notice and in a
12 format that attracts attention when posted in a public space.

13 B. Identify Class Members

14 1. Identify IHSS recipient class members and their
15 providers and their last known addresses:

16 a. Identify all IHSS recipients and providers from
17 June 17, 1990 through March 31, 1994 in all counties except in
18 Los Angeles, Fresno, San Bernardino, Amador, Tehama and Calaveras
19 Counties.

20 b. Determine the current mailing address from the
21 IHSS payrolling system for all members currently receiving IHSS.

22 c. Determine any updated mailing address for those
23 recipients and providers not in the current IHSS payrolling
24 system, by using Medi-Cal records or if unavailable, by using the
25 address matching services of the Franchise Tax Board.

1 d. Obtain a list of all persons and their updated
2 addresses whose notices are returned in order to allow review by
3 defendants and class counsel.

4 2. Identify IHSS applicant class members and their
5 providers:

6 a. Develop a list of all county welfare offices and
7 organizations and agencies designated by plaintiffs including
8 regional centers, independent living centers, areas boards, and
9 legal aid programs for mailing poster notices and regular notices
10 and claim forms.

11 C. Notify Class Members About Retroactive Benefits

12 1. Mail notices and claim forms and the public notices
13 to all persons and others identified in paragraph II.B above.

14 2. Mail sufficient numbers of public notices, plus a
15 copy of the notice and claim form to:

16 a. Each county welfare department with instructions
17 to display the posters in prominent locations in every office
18 having contact with the public for six (6) month period beginning
19 with the effective date of the claim period as contained in the
20 regulations.

21 b. All organizations and groups on a list supplied
22 by plaintiffs' counsel with a letter request to display the
23 posters in a prominent location for six (6) month period
24 beginning with the effective date of the claim period as
25 contained in the regulations, and with camera ready copies of the
26 notice of rights and claim form.

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1 3. Mail all notices in the week before the start of the
2 claiming period.

3 4. Returned notices will be retained for review by
4 defendants and class counsel for 60 days after the close of the
5 claim period.

6 D. Determine Eligibility For Retroactive Benefits

7 1. Defendants have the discretion and reserve the right
8 to process claims centrally or in affected individual counties
9 using county staff.

10 2. The claim period shall be six calendar months
11 beginning in the month after the effective date of the
12 regulations implementing this judgment under paragraph III.A.

13 3. Proof of eligibility conditions:

14 a. A doctor's statement that an IHSS recipient or
15 applicant was prescribed range of motion exercises and the hours
16 of such exercises prescribed monthly during the relevant time
17 period. The doctor signing the statement need not be the doctor
18 prescribing the range of motion exercises, but must base the
19 statement on the medical records of the recipient or applicant.

20 b. A recipient, applicant or provider's statement,
21 signed under penalty of perjury, that range of motion exercises
22 were provided during the relevant time period and the hours
23 provided monthly.

24 c. An IHSS applicant must also submit proof of
25 meeting all other categorical and financial eligibility
26 conditions for the receipt of IHSS during the relevant period and

1 a statement indicating filing an application for IHSS benefits
2 during the relevant period.

3 4. Computation of amount of retroactive benefits

4 a. The amount of hours authorized for ROM each month
5 multiplied by the county's applicable individual provider hourly
6 wage during each month for which benefits are claimed.

7 b. The amount of hours for range of motion
8 retroactive benefits may not exceed the applicable statutory
9 grant maximum. The applicable statutory grant maximum shall be
10 based on the additional monthly hours of range of motion
11 exercises allowed during each month of the retroactive period.

12 c. A share of cost will be calculated for applicants
13 utilizing the current SSI/SSP payment standards in computing the
14 amount of retroactive benefits due.

15 5. As appropriate, issue regulations and other
16 implementation plans (e.g., CMIPS instructions, automated notice
17 of action messages) concerning claim processing, which must
18 include:

19 a. Limit eligibility information for retroactive
20 benefits from class members to the claim form.

21 b. Use existing case files to establish all IHSS
22 status and income eligibility conditions.

23 c. Provide adverse information in notice of action
24 with an opportunity to submit additional information.

25 E. Issue Notice Of Action

26 Issue and mail a Notice of Action on each claim as
27 follows:

- 1 1. Within sixty (60) days after receiving the claim
2 form.
- 3 2. For every month retroactive benefits are claimed:
4 a. the computation of the amount due and prejudgment
5 and postjudgment interest; or
6 b. reasons and facts why no amount is due or less
7 due than claimed, including a statement of what additional
8 information is needed or adverse information, and that the
9 claimant must provide it within forty-five (45) days from the
10 date of the Notice of Action.
- 11 3. The total retroactive benefits and prejudgment and
12 postjudgment interest.
- 13 4. A statement about the taxability of wages,
14 withholding taxes, and deeming for SSI recipients whose providers
15 are currently spouses or parents of minor children recipients.
- 16 5. A statement about the right to a state hearing and
17 the procedures for obtaining one.

18 F. Issue Payment

- 19 1. Mail payment on or before the 10th of the month or
20 hold them for mailing on or before the 10th of the following
21 month.
- 22 2. Except as extended by subparagraph II.F.1, mail
23 payment within 30 days after the date of a notice of action for
24 payment is mailed to the claimant.

1 III. WRIT OF MANDATE ON COMPLIANCE AND OTHER ISSUES

2 Let a writ of mandate issue pursuant to Code of Civil
3 Procedure section 1085 on behalf of plaintiffs and the certified
4 class and commanding defendants to take the following actions:

5 A. Issue Regulations

6 1. Develop regulations, notices, claim forms and other
7 implementation procedures in consultation with class counsel.

8 2. Provide plaintiffs' counsel with the defendants'
9 final text of proposed regulations, notice, claim forms and
10 public notice no later than 45 days before filing the regulations
11 with the Office of Administrative Law.

12 3. DSS shall use its best efforts to issue emergency
13 regulations to implement this judgment.

14 B. Issue Reports

15 Send class counsel the following:

16 1. Bimonthly status report on all actions taken on the
17 judgment and include basic implementation records, including
18 contracts with all agencies. The first status report is due
19 monthly.

20 2. Identification: number of recipient and provider
21 class members identified from IHSS payrolling system; number with
22 current addresses; number updated through Medi-Cal; number
23 updated through Franchise Tax Board. The report is due one month
24 after the date of mailing the notices.

25 3. Monthly claim reports by county with the number of
26 claims received, approved, denied, pending, and amount of wages
27 and interest paid, and number of claims sent to individual class

1 members and date(s) of mailing; number returned undelivered for
2 those with mailing addresses from IHSS payrolling system, Medi-
3 cal, and Franchise Tax Board. The first report is due by the
4 10th of the second month of the claiming period.

5 4. Returned notices: The parties will explore the
6 feasibility of remailing returned notices.

7 5. Defendants' obligation to issue reports shall
8 terminate at the point there are no pending claims, including
9 fair hearings.

10 C. Produce Implementation Records

11 1. On request and within a reasonable period of time,
12 allow plaintiffs and their counsel or agents to inspect any and
13 all records used by defendants in implementing this judgment..

14 2. Without request and monthly, send plaintiffs' counsel
15 all fair hearing decisions and related agency position
16 statements.

17 D. Extend Time For Claiming Attorney Fees And Costs

18 Plaintiff may file any motion for attorney fees and costs
19 for work up to and including the date of the judgment within
20 ninety days of the date of this judgment, and this judgment
21 modifies and extends any and all statutory time limits for filing
22 cost memoranda and fee motions, including under Code Civil
23 Procedure section 1033 and California Rules of Court 870(b)(3)
24 and 870.1(b).

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PARTE A: RECLAMANTE QUE SOLICITA EL PAGO

NOMBRE (APELLIDO, NOMBRE, INICIAL DEL NOMBRE QUE USA EN MEDIO)	NUMERO DE SEGURO SOCIAL	FECHA DE NACIMIENTO (MM/DD/AAAA)
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1. ¿Qué clase de reclamante es usted: Beneficiario, Solicitante o Proveedor? (Favor de marcar el que pertenece a usted; vea la definición de cada uno en la primera página)

BENEFICIARIO

SOLICITANTE

PROVEEDOR

PARTE B: BENEFICIARIO O SOLICITANTE DE IHSS QUE RECIBIO EJERCICIOS PARA EL ARCO DE MOVIMIENTO**ESTA PERSONA RECIBIO LOS EJERCICIOS PARA EL ARCO DE MOVIMIENTO:**

NOMBRE (APELLIDO, NOMBRE, INICIAL DEL NOMBRE QUE USA EN MEDIO)	NUMERO DE SEGURO SOCIAL	FECHA DE NACIMIENTO (MM/DD/AAAA)	
DIRECCION ACTUAL (NUMERO, CALLE, NUMERO DE APARTAMENTO O ESPACIO)		NUMERO DE TELEFONO ()	
CIUDAD	CONDADO	ESTADO	CODIGO POSTAL

COMPLETE LAS PREGUNTAS 1-3 A CONTINUACION SOLAMENTE SI ESTA PERSONA FUE EL SOLICITANTE AL QUE SE LE NEGARON LOS SERVICIOS DE IHSS:

1. ¿Cuándo se le negaron al solicitante los servicios de IHSS? (mes/año) _____/_____
2. ¿Cuál condado negó la solicitud? _____
3. ¿Recibió beneficios de Ingresos Suplementales de Seguridad/Pagos Suplementarios del Estado durante cualquier momento durante junio de 1990 - marzo de 1994?

SI NO

Si contestó "SI", marque cada año en que el solicitante recibió beneficios de Ingresos Suplementales de Seguridad/Pagos Suplementarios del Estado

1990 1991 1992 1993 1994

PARTE C: PROVEEDOR DE IHSS QUE PROPORCIONO LOS EJERCICIOS PARA EL ARCO DE MOVIMIENTO**ESTA PERSONA PROPORCIONO LOS EJERCICIOS PARA EL ARCO DE MOVIMIENTO AL BENEFICIARIO O SOLICITANTE DE IHSS NOMBRADO EN LA PARTE B.**

NOMBRE (APELLIDO, NOMBRE, INICIAL DEL NOMBRE QUE USA EN MEDIO)	NUMERO DE SEGURO SOCIAL	FECHA DE NACIMIENTO (MM/DD/AAAA)	
DIRECCION ACTUAL (NUMERO, CALLE, NUMERO DE DEPARTAMENTO O ESPACIO)		NUMERO DE TELEFONO ()	
CIUDAD	CONDADO	ESTADO	CODIGO POSTAL

CANTIDAD DE HORAS RECETADAS

¿Cuánto ejercicio para el arco de movimiento fue recetado durante los meses siguientes?

1990		
<u>Mes</u>	<u>Minutos</u>	Total por Semana
JUNIO 17 - 30		
JULIO		
AGOSTO		
SEPTIEMBRE		
OCTUBRE		
NOVIEMBRE		
DICIEMBRE		

1992		
<u>Mes</u>	<u>Minutos</u>	Total por Semana
MAYO		
JUNIO		
JULIO		
AGOSTO		
SEPTIEMBRE		
OCTUBRE		
NOVIEMBRE		
DICIEMBRE		

1991		
<u>Mes</u>	<u>Minutos</u>	Total por Semana
ENERO		
FEBRERO		
MARZO		
ABRIL		
MAYO		
JUNIO		
JULIO		
AGOSTO		
SEPTIEMBRE		
OCTUBRE		
NOVIEMBRE		
DICIEMBRE		

1993		
<u>Mes</u>	<u>Minutos</u>	Total por Semana
ENERO		
FEBRERO		
MARZO		
ABRIL		
MAYO		
JUNIO		
JULIO		
AGOSTO		
SEPTIEMBRE		
OCTUBRE		
NOVIEMBRE		
DICIEMBRE		

1992		
<u>Mes</u>	<u>Minutos</u>	Total por Semana
ENERO		
FEBRERO		
MARZO		
ABRIL		

1994		
<u>Mes</u>	<u>Minutos</u>	Total por Semana
ENERO		
FEBRERO		
MARZO		

Comentarios/consideraciones adicionales _____

CERTIFICACION

Yo certifico que tengo licencia para practicar en el Estado de California y que el recetar los ejercicios para el arco de movimiento está dentro de la esfera de mi profesión y licencia. A mi juicio, los ejercicios para el arco de movimiento fueron necesarios para mantener la salud del paciente, y los pudiera hacer el paciente mismo(a) si no fuera por su impedimento funcional.

Yo, la persona que firma a continuación, declaro bajo pena de perjurio que las declaraciones anteriores son correctas y verdaderas.

FIRMA DEL DOCTOR/QUIROPRÁCTICO

FECHA